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1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MONTANA  
3 MISSOULA DIVISION  
4 - - -

5 UNITED STATES OF AMERICA, )  
6 Plaintiff, )  
7 vs. ) Civil Action No.  
8 W.R. GRACE & COMPANY, W.R. GRACE & ) 01-72-M-DWM  
9 CO., CONN., and KOOTENAI )  
10 DEVELOPMENT CORPORATION, )  
11 Defendants. )  
12 - - -

13 Videotaped Deposition of RICHARD J. LEE  
14 Saturday, September 28, 2002  
15 - - -

16 The videotaped deposition of RICHARD J. LEE,  
17 called as a witness by the Plaintiff, pursuant to  
18 notice and the Federal Rules of Civil Procedure  
19 pertaining to the taking of depositions, taken before  
20 me, the undersigned, Terri J. Urbash, a Notary Public  
21 in and for the Commonwealth of Pennsylvania, at the  
22 Ramada Hotel, One Bigelow Square, Pittsburgh,  
23 Pennsylvania 15219, commencing at 9:03 o'clock a.m.  
24 the day and date above set forth.  
25 - - -

26 COMPUTER-AIDED TRANSCRIPTION BY  
27 MORSE, GANTVERG & HODGE, INC.  
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1 when we were originally doing our side by side  
2 evaluation, was NIOSH 7400 or 7402, or a method that  
3 could have been, it could have been AHERA, it could  
4 have been Level II, it could have been ISO, that  
5 simply restricted the size classes to be the long --  
6 the Berman fibers, the Berman and Crump fibers or  
7 Stanton fibers, something that pulls out those fibers  
8 that determines in a realistic manner the potential  
9 exposure to fibers that are believed to have the  
10 highest potency. Those methods were available.

11 Q Dr. Lee, please turn to page 33 of your  
12 report. Are you there?

13 A Okay.

14 Q You state, please correct me if I am wrong,  
15 "EPA used the presence of amphiboles in the dust as  
16 proof that an exposure pathway exists and that  
17 historical exposures have occurred. EPA ignored the  
18 fact that the presence of asbestos in dust has not  
19 been showed to be a predictor for airborne fiber  
20 levels and that the concentrations of amphiboles in  
21 the dust were far below those indicating a historical  
22 exposure." Did I read your opinion correctly?

23 A Yes.

24 Q Do you plan to give this opinion at trial?

25 A If asked.

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1 Q Dr. Lee, are you saying that EPA attempted  
2 to show a statistical correlation between dust in  
3 homes and the amount of amphibole fibers that would  
4 have been found in air if activities disturbed that  
5 dust?

6 A No, I'm saying what I said there, not what  
7 you said.

8 Q So you don't believe that we attempted to  
9 create any kind of a statistical correlation between  
10 what is in dust and what is in air?

11 A While I don't believe it or not believe it,  
12 I didn't see any evidence that you had.

13 The way I saw EPA's data set was that they  
14 looked -- they were looking for pathways, they were  
15 looking at airborne, they were looking at dust, they  
16 were looking at soil, and if they found those, if they  
17 found amphiboles in one of those media, they concluded  
18 that the pathway existed; okay?

19 Q So Doctor --

20 A That's the content of this sentence.

21 If they had, in fact, if they have, I'd be  
22 welcome to see any correlation they did on what's in  
23 the air with what's in the dust at Libby, particularly  
24 relative to chrysotile versus amphibole concentration.

25 Q Doctor, is it your opinion that there is no

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1 relationship, statistical or otherwise, between the  
2 resuspension of airborne fibers and dust that is moved  
3 by human activities?

4 A If the asbestos results in the dust results  
5 from building materials, results from decomposition or  
6 destruction or damage to building materials, that is  
7 true. Dust measurements do not correlate in any  
8 manner that I have seen with air measurement.

9 Q So there is no relationship whatsoever?

10 A We have found, and I don't believe anyone  
11 has shown a relationship, we have found none and I  
12 don't believe anyone has shown it.

13 Now --

14 Q Doctor, let me ask you a question.

15 A Could you wait till I'm finished?

16 Q It depends on if you are going to be  
17 responsive to my question, Doctor.

18 A Maybe that's the rules here, but it seems  
19 to me that I'm supposed to answer the question as best  
20 I can without interruption, and then if I'm not  
21 responsive, I don't know that -- I'm trying to be  
22 responsive, but I still-- well, now I can't even  
23 remember what my answer or the question was so I  
24 guess --

25 Q I'd be happy to put the question back to

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1 you and you can answer it completely.

2 A If you could attempt to.

3 Q Is there no relationship of any kind  
4 between dust and what is in the air?

5 A Okay. Let me give you my answer, which I  
6 think was being, was right on track, in my opinion,  
7 and that is, in building materials, if the dust or  
8 debris results from building material, we and others  
9 have seen no correlation with the concentration of  
10 dust -- of asbestos and dust as measured by the  
11 current techniques and the airborne concentrations of  
12 asbestos.

13 In fact, we have solid data that says  
14 billions of structures in the dust, nothing in the  
15 air; okay?

16 Now, is that always the case? The answer  
17 to that is probably it depends on the form. If you  
18 have an extremely well fiberized asbestos and it is  
19 in dry -- deposited on dry dust, then under those  
20 circumstances, you probably will get a correlation  
21 between the amount of asbestos in dust, but you are  
22 going to have to have two requirements, one, it be  
23 dry, two, it be very highly fiberized.

24 Q Doctor, does it depends on the level of  
25 activities that occurs in the dust?

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1 A In those cases it would very much depend on  
2 the level of activity.

3 Q Do you believe that if somebody sweeps a  
4 dusty floor, I'm not talking about asbestos now,  
5 somebody sweeps a dusty floor, there is no  
6 relationship to what the amount of dust is where they  
7 are sweeping and what's in the air?

8 A Well, I don't see how that -- I think my  
9 previous answer answered that, but I'd cite to you an  
10 EPA study in Missouri that where they did a sweeping  
11 study of a variety of conditions, EPA funded, I don't  
12 know who actually paid for it, but they did a variety  
13 of studies in furnace rooms and the like with various  
14 concentrations of asbestos and dust and found no  
15 correlation, sweeping and a variety of other  
16 activities.

17 Q Is that no statistical correlation or no  
18 relationship whatsoever?

19 A They found, it is awhile since I saw it, so  
20 take this as my best recollection of their finding,  
21 they found no levels which would exceed an allowable  
22 OSHA limit of .1 fibers.

23 Q That was not my question, Doctor. I said,  
24 "Is there a relationship between dust that is  
25 disturbed by an activity and what you find in air?"

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1 A Is there a relationship?

2 Q I didn't ask if there was a relationship  
3 that involved the exceedance of a standard.

4 A I think my last answer stands. If you can  
5 show that the dust is dry enough and the asbestos in  
6 it was fiberized enough, in other words, you have  
7 sufficient --

8 Q Doctor, I didn't ask about asbestos. I  
9 simply asked you, is there a relationship between dust  
10 and the activity that disturbs it and what you would  
11 find in it?

12 A I'm sorry. I was concentrating on this  
13 case. And that answer is it depends on your  
14 definition and the state of the dust.

15 Q If I were to sweep a floor that has dust on  
16 it, would you expect to see dust in the air?

17 A The answer is -- that is a tremendous -- it  
18 depends. Here is your issue. I grew up on a farm in  
19 North Dakota. During midsummer during July, if I'm  
20 out driving a tractor pulling a cultivator, there is a  
21 dust cloud a half mile high. It rains, the next  
22 morning I'm out there in that same field, there is not  
23 a bit of dust being raised. I'm actively stirring up  
24 the material in both cases, the difference is a half  
25 percent moisture, so maybe, maybe not.

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1 MR. COHN: Could you mark this for me,  
2 please.

3 (Thereupon, Deposition Exhibit No. 713 was  
4 marked for identification.)

5 Q Doctor, you have been handed what has been  
6 marked as Exhibit 713, it is entitled "Dust And  
7 Airborne Concentrations, Is There A Correlation," is  
8 that not correct?

9 A No.

10 Q Hang on one second.

11 MR. COHN: Let's take a break for a  
12 moment.

13 THE VIDEO OPERATOR: We are off the record.  
14 The time is 2:05 p.m.

15 (Recess taken.)

16 THE VIDEO OPERATOR: We are back on the  
17 record. The time is 2:09 p.m.

18 BY MR. COHN:

19 Q Doctor, I am sorry about the error in  
20 exhibits there. Let me try again.

21 A All right.

22 Q I have read it this time and I think it is  
23 correct.

24 (Thereupon, Deposition Exhibit No. 714 was  
25 marked for identification.)

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1 Q Doctor, before you look at this one  
2 exhibit, let me ask you one more question if I might  
3 on dust.

4 If you had the same conditions, that is the  
5 same dryness, the same size dust, everything else, and  
6 you had two instances where you had the same activity  
7 involved, would you expect to see the same dust in the  
8 air with that activity if one increased the amount of  
9 activity and the other remained the same?

10 A On average.

11 Q What has been put in front of you as  
12 Exhibit 714, I believe, finally, is your article "Dust  
13 And Airborne Concentrations, Is There A correlation?"

14 A My article?

15 Q Are you not the primary author?

16 A I thought it was Chatfield.

17 Q I'm talking about Exhibit 714.

18 A Oh, okay. All right. Yes.

19 Q Was this article based on --

20 A I'm sorry, I thought you had said  
21 Chatfield's article.

22 Q No, I'm sorry, I'm talking about the one  
23 that is in front of you.

24 A All right.

25 Q What is the article -- was this article

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